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041553Z Apr 01

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ACTION AF-00

INFO	LOG-00	AID-00	CIAE-00	COME-00	CTME-00	DODE-00	EB-00
	EXIM-01	E-00	VC-00	FRB-00	H-01	TEDE-00	INR-00
	ITC-01	LAB-01	AC-01	NSAE-00	OMB-01	OPIC-01	OPM-01
	ACE-00	SP-00	SSO-00	STR-00	TRSE-00	USIE-00	DRL-02
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FM AMEMBASSY HARARE
TO SECSTATE WASHDC 8580
INFO NSC WASHDC
DEPT OF LABOR WASHDC
SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
AMEMBASSY NAIROBI

C O N F I D E N T I A L SECTION 01 OF 02 HARARE 001222

SIPDIS

DRL/IL FOR KBRYANT
NSC FOR SENIOR AFRICA DIRECTOR JFRAZER
LONDON FOR CGURNEY
PARIS FOR BWILLIAMS
NAIROBI FOR PFLAUMER
PASS USAID FOR AFR/SD - DWELLER, AFR/SA - CPALMA,
NNEWMAN, AA/AFR - VDICKSON-HORTON

E.O. 12958: DECL: 04/04/11

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SUBJECT: ZIMBABWE'S CIVIL SERVANTS CONCERNED THAT
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PAGE 02 HARARE 01222 01 OF 02 051838Z
PROPOSED LABOR BILL DOES MORE HARM THAN GOOD

CLASSIFIED BY CHARGE D' AFFAIRES EARL M. IRVING FOR
REASONS 1.5 (B/D).

SUMMARY

1. (C) ON MARCH 30, LABOFF MET WITH CHARLES CHIVIRU, THE EXECUTIVE SECRETARY OF THE ZIMBABWE PUBLIC SERVICE ASSOCIATION (PSA), TO DISCUSS THE LABOR RELATIONS AMENDMENT (LRA) BILL THAT IS CURRENTLY BEING CONSIDERED BY PARLIAMENT. CHIVIRU IS CONCERNED THAT THE GOVERNMENT OF ZIMBABWE (GOZ) WILL ATTEMPT TO FAST-TRACK THE BILL THROUGH PARLIAMENT WITHOUT ANY AMENDMENTS OR CHANGES, BECAUSE IT CONTAINS PROVISIONS THAT EFFECTIVELY INCREASE THE GOZ'S CONTROL OVER UNIONS AND WORKERS. THE BILL'S LANGUAGE MAKES IT MORE DIFFICULT FOR UNIONS AND WORKERS TO ENGAGE IN INDUSTRIAL ACTIONS, AND ALSO INCLUDES PROVISIONS FOR IMPOSING FINES AND JAIL TERMS AGAINST UNIONS AND INDIVIDUAL LABOR LEADERS WHO INCITE MEMBERS TO UNDERTAKE INDUSTRIAL ACTIONS, INCLUDING STAYAWAYS. CHIVIRU STATED THAT THE GOZ WANTS THIS BILL QUICKLY PASSED INTO LAW SO THAT IT WILL STRENGTHEN ITS HAND IN PREVENTING STAYAWAYS AND OTHER INDUSTRIAL ACTIONS AS THE 2002 PRESIDENTIAL CAMPAIGN SHIFTS INTO HIGH-GEAR. TO COUNTER THIS EFFORT, THE PSA AND ZIMBABWE CONGRESS OF TRADE UNIONS (ZCTU) ARE JOINTLY LOBBYING MEMBERS OF PARLIAMENT FROM BOTH THE RULING ZIMBABWE AFRICAN NATIONAL UNION - PATRIOTIC FRONT (ZANU-PF) AND THE
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OPPOSITION MOVEMENT FOR DEMOCRATIC CHANGE (MDC) TO
REVIEW AND PROVIDE AMENDMENTS TO THE BILL. END SUMMARY.

ZIMBABWE'S PUBLIC SERVICE ASSOCIATION

2. (SBU) THE PSA IS AN UMBRELLA ORGANIZATION THAT REPRESENTS 40,000 ZIMBABWE CIVIL SERVANTS. CIVIL SERVANTS IN ZIMBABWE ARE REPRESENTED BY ASSOCIATIONS, AS OPPOSED TO UNIONS, BECAUSE THE GOZ DOES NOT RECOGNIZE THEIR RIGHT TO UNIONIZE. IN EFFECT, THESE ASSOCIATIONS FUNCTION AS UNIONS FOR THEIR MEMBERS, AND THE PSA IS AN AFFILIATE OF THE ZCTU. THE PSA HAS UNDER ITS UMBRELLA THE CIVIL SERVICE EMPLOYEES ASSOCIATION (CSEA), THE ADMINISTRATIVE AND EXECUTIVE OFFICERS ASSOCIATION (AEOA), THE PROFESSIONAL AND TECHNICAL OFFICERS ASSOCIATION (PTOA), AND THE GOVERNMENT WORKERS ASSOCIATION (GWA).

THE LRA IS MORE BAD THAN GOOD

13. (SBU) ACCORDING TO CHIVIRU, THE CURRENT LRA HAS LITTLE RESEMBLANCE TO THE PROPOSED HARMONIZED LABOR BILL THAT WAS DRAFTED BY THE INTERNATIONAL LABOR ORGANIZATION (ILO) FOR ZIMBABWE IN 1993. THE NEW BILL INCORPORATES ELEMENTS FAVORED BY CIVIL SERVANTS, INCLUDING BRINGING CIVIL SERVANTS UNDER THE LRA, ESTABLISHING WORK COUNCILS FOR CIVIL SERVANTS, PROVIDING MATERNITY LEAVE,
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PROHIBITING SEXUAL HARASSMENT, AND PROVIDING CONCILIATION AND ARBITRATION SERVICES. HOWEVER, CHIVIRU STATED THESE POSITIVES ARE OUTWEIGHED BY THE BILL'S NEGATIVES, WHICH HE LISTED. THE LRA FAILS TO REPLACE THE PUBLIC SERVICE ACT (PSA), UNDER WHICH CIVIL SERVANTS' TERMS OF EMPLOYMENT AND LABOR RIGHTS ARE CURRENTLY GOVERNED (AND LIMITED). INSTEAD, THE LRA SUPPLEMENTS THE PSA. THE LRA GRANTS THE RIGHT OF COLLECTIVE BARGAINING TO CIVIL SERVANTS, BUT ONLY THROUGH THE CREATION OF A PUBLIC SERVICE NATIONAL EMPLOYMENT COUNCIL (PSNEC). THE LRA DOES NOT SPECIFY WHEN THE PSNEC WILL BE FORMED, AND LEAVES THIS DECISION UP TO THE MINISTER OF LABOR. ACCORDING TO CHIVIRU, THE MINISTER OF LABOR COULD CHOOSE TO TAKE NO ACTION ON FORMING THE PSNEC, AND THEN CIVIL SERVANTS WOULD REMAIN WITHOUT THE RIGHT OF COLLECTIVE BARGAINING.

14. (SBU) THE LRA ALSO DOES NOT DEFINE THE BASIS ON WHICH CIVIL SERVANTS CAN BE DEEMED ESSENTIAL EMPLOYEES. IT LEAVES THIS UP TO THE GOZ TO DETERMINE. IN THE PAST, THE GOZ HAS DEFINED MOST CIVIL SERVANTS AS ESSENTIAL IN ORDER TO PROHIBIT THEIR ENGAGING IN STAYAWAYS AND OTHER LABOR ACTIONS. CHIVIRU SAID A FINAL SERIOUS FLAW IS

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THAT ALTHOUGH THE LRA MENTIONS THE ESTABLISHMENT OF A LABOR COURT, ALONG WITH THE QUALIFICATIONS FOR JUDGES IN THIS COURT, IT DOES NOT MENTION THE PROCEDURES BY WHICH IT WILL OPERATE, NOR WHETHER IT WILL BE INDEPENDENT OF THE EXECUTIVE BRANCH. WITHOUT AN INDEPENDENT LABOR COURT, CHIVIRU ARGUES, WORKERS IN GENERAL, AND CIVIL SERVANTS IN PARTICULAR, WILL NOT RECEIVE FAIR HEARINGS IN LABOR DISPUTES WITH THE GOZ.

A GOZ EFFORT TO GAIN CONTROL OVER UNIONS

15. (C) CHIVIRU VIEWS THE LRA BILL AS AN EFFORT BY THE GOZ TO RESTRICT LABOR RIGHTS AND GAIN EFFECTIVE CONTROL OVER THE LABOR ACTIONS OF UNIONS AND WORKERS, RATHER THAN AN EFFORT TO IMPROVE OR MODERNIZE ZIMBABWE'S LABOR

LAW. OF PARTICULAR CONCERN TO CHIVIRU ARE PROVISIONS OF THE LRA REQUIRING UNIONS TO CANVASS THEIR MEMBERSHIP BEFORE ENGAGING IN INDUSTRIAL ACTIONS, AND THE INCLUSION OF FINES AND PRISON TERMS FOR INDIVIDUAL LABOR LEADERS WHO ARE FOUND GUILTY OF INCITING WORKERS TO ENGAGE IN ILLEGAL LABOR ACTIONS. CHIVIRU STATED THAT THE LRA REQUIREMENT THAT A UNION CANVASS ITS MEMBERS BEFORE ENGAGING IN AN INDUSTRIAL ACTION WOULD LARGELY PREVENT SUCH ACTIONS. HE EXPLAINED THAT HOLDING SUCH ELECTIONS, WITH INDIVIDUAL UNIONS' MEMBERSHIPS SPREAD AROUND ZIMBABWE, WOULD BE PROHIBITIVELY COSTLY. IN ADDITION, HE BELIEVES THAT THE GOZ WOULD INTERFERE IN SUCH

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ELECTIONS TO UNDERMINE THEM AND TO INTIMIDATE WORKERS INTO VOTING AGAINST PROPOSED INDUSTRIAL ACTIONS. CHIVERU SAID THE PROVISION UNDER THE LRA BILL FOR A FINE OF UP TO \$30,000 ZIMBABWE DOLLARS (ABOUT US\$600), OR UP TO TWO YEARS IN PRISON FOR ANY INDIVIDUAL FOUND GUILTY OF ENCOURAGING ANY ILLEGAL LABOR ACTION, WOULD HAVE A CHILLING EFFECT ON THE ROLE PLAYED BY LABOR LEADERS. THE LRA ALSO CONTAINS A PROVISION THAT WOULD HOLD LABOR UNIONS AND LABOR OFFICIALS LIABLE FOR ANY PERSONAL INJURIES OR PROPERTY DAMAGE THAT RESULT FROM THEIR RECOMMENDING, ENCOURAGING, OR INCITING UNLAWFUL INDUSTRIAL ACTIONS. CHIVIRU STATED THAT THE PURPOSE FOR THESE PROVISIONS IS NOT TO PROTECT ZIMBABWEAN SOCIETY FROM DAMAGE FROM UNLAWFUL OR VIOLENT LABOR ACTIONS, BUT RATHER TO MAKE ALL TYPES OF LABOR ACTIONS SO COSTLY THAT LABOR UNIONS AND THEIR LEADERS WILL BE COWED INTO NOT HOLDING THEM.

COMMENT

16. (C) WE AGREE WITH CHIVERU'S READING OF THE LRA. THE BILL WILL SET BACK, RATHER THAN ADVANCE, THE RIGHTS OF UNIONS AND THEIR WORKERS IN ZIMBABWE. THE REASON THAT THE GOZ HAS CHOSEN TO SUBMIT THE LRA THIS YEAR, AFTER SITTING ON THE ILO DRAFT FOR THE LAST EIGHT YEARS, IS NOT LOST ON UNION LEADERS: IT IS A CLEAR AND CALCULATED REACTION TO THE SUCCESS OF THE MDC IN LAST YEAR'S PARLIAMENTARY ELECTIONS. THE GOZ RECOGNIZES THAT THE ZCTU AND THE PSA WERE INSTRUMENTAL IN THE ORGANIZATIONAL

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AND ELECTORAL SUCCESS OF THE MDC. PART OF THIS SUCCESS WAS THE USE OF ZCTU-LED STAYAWAYS THAT COALESCED OPPOSITION TO THE MUGABE GOVERNMENT. IF THE GOZ SUCCEEDS IN FAST-TRACKING THE LRA THROUGH PARLIAMENT WITHOUT AMENDMENTS, IT WOULD GIVE THE GOZ NEW LEGAL TOOLS TO CONTROL AND NEUTER ZIMBABWE'S UNIONS IN ORDER TO HINDER THEIR SUPPORT FOR THE MDC. HOWEVER, GIVEN THAT THE PARLIAMENTARY LEGAL COMMITTEE HAS ALREADY FOUND THAT SECTIONS OF THE BILL CONTRAVENE CONSTITUTIONAL GUARANTEES REGARDING FREEDOM OF ASSEMBLY AND ASSOCIATION, IF IT IS FAST-TRACKED INTO LAW IT MIGHT NOT SURVIVE A COURT CHALLENGE TO ITS CONSTITUTIONALITY. END COMMENT.

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